



presented in the Southern District of Texas in support of the Rule 12(b)(6) motion. For the reasons that follow, the Court GRANTS IN PART and DENIES IN PART the motion (Doc. No. 30).

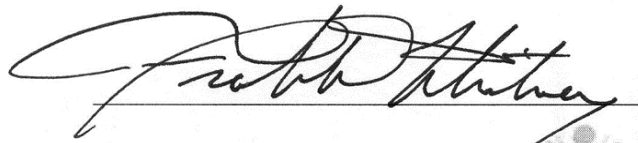
In transferring venue, the court concluded the parties' Distribution Agreement is the operative pleading in terms of forum selection. (Doc. No. 24, p. 8). Specifically, the court found "the later clause in the Distribution Agreement, selecting North Carolina, supersedes the earlier clause [selecting Texas] in the Partnership Agreement." (Id.; see also Doc. Nos. 16-1, 21-2)). It follows that the choice of law provision in that Distribution Agreement also controls in this case, as opposed to the choice of Texas law indicated in the superseded Partnership Agreement. (See Doc. Nos. 16-1, 21-2). The Distribution Agreement provides, "It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina, notwithstanding any rule or principal of choice of laws." (Doc. No. 16-1, p. 10).

Accordingly, the Court hereby GRANTS that portion of the motion seeking dismissal of the claims asserting violations of Texas law, and therefore DISMISSES WITHOUT PREJUDICE Claims Number 8, 9, and 10 (Doc. No. 1, pp. 15-18). This ruling is without prejudice to Plaintiff's ability to amend the complaint to assert any violations under North Carolina state law. In light of this ruling, the Court DENIES WITHOUT PREJUDICE the remainder of Defendant's Motion to Dismiss and will allow Plaintiff, as previously-requested in their response in opposition to the motion to dismiss, "leave to amend its Complaint on the matter of its copyright claims." (Doc. No. 21, pp. 4, 14). Plaintiff's Amended Complaint must be filed by October 18, 2021, and Defendant's responsive pleadings shall be filed in accordance with the applicable Federal Rules of Civil Procedure and this Court's standing orders.

IT IS THEREFORE ORDERED that Defendant's Renewed Motion to Dismiss, (Doc. No. 30), is GRANTED IN PART and DENIED IN PART as set forth herein.

IT IS SO ORDERED.

Signed: October 6, 2021

  
Frank D. Whitney  
United States District Judge

